THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 28307 of 1995

Dated: 05.12.2006

Between:

P. Thippanna

… Petitioner

AND

The Chairman,
Industrial Tribunal-cum-Labour Court,
Anantapur & others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 28307 of 1995

ORDER:-

The petitioner in this writ petition challenges the order of the 1st respondent passed in S.A.No.1 of 1995 in R.C.No.117 of 1989 dated 25.10.1995 whereunder he confirmed the order passed by the 2nd respondent Authority under Section 41 of the A.P. Shops and Establishments Act, 1966 and Assistant Commissioner of Labour, Kurnool, dated 30.07.1988.

The petitioner was appointed as an Accountant under the control of the 3rd respondent, an establishment, under the provisions of the A.P. Shops and Establishments Act, 1966 (for short "the Act") in January 1985. The petitioner alleged that as he was elected as President of A.P. Shops Workers Union, Adoni Branch, the 3rd respondent unlawfully terminated his services orally on 14.07.1986. On 30.10.1986, the Management of the 3rd respondent reinstated the petitioner into service under a settlement, the terms of which are as under:

> "1. It is agreed that Sri P.Thippanna will be reinstated with back wages and with continuity of service immediately.
>
> 2. Sri P.Thippanna will be in service for six

months from now and he will quit service voluntarily on or before 30.04.1987 and the Management shall pay him terminal benefits at the time of his quitting service as per rules.

3. The Union and the Workman have agreed to withdraw all cases in this issue, instituted in A.P. High Court and before the authority under Section 41 of the A.P. Shops and Establishment Act, Kurnool."

After receiving the backwages, having been reinstated into service in terms of settlement and also the terminal benefits consequent upon the petitioner's discontinuance from the employment, the petitioner moved the 2nd respondent Authority under Section 41 of the Act by way of an appeal registered as Appeal No.4 of 1987. The 2nd respondent passed orders dated 30.07.1988 observing that if the petitioner is reinstated, there would be unrest as there were severe misunderstandings between the petitioner and the 3rd respondent and that therefore in lieu of reinstatement, the petitioner should be paid reasonable compensation. Accordingly, the 2nd respondent Authority awarded an amount of Rs.1,590/- towards compensation in lieu of reinstatement. Feeling aggrieved by the said order, the petitioner moved the 1st respondent in S.A.No.1 of 1995 in R.C.No.117 of 1989 by way of a second appeal. The 1st respondent by its order dated 26.10.1995 held that in compliance with condition No.3 of the agreement dated 30.10.1986, the petitioner received terminal benefits, which fact was admitted by him before it and that he himself left the services voluntarily in due compliance of the agreement dated 30.10.1986. The 1st respondent therefore found that the discontinuance of the petitioner does not amount to termination of his

services and that therefore Section 40 of the Act, which shows that any employer without any reasonable cause should not terminate the services of the employee is not attracted. The 1st respondent in its order concluded that the petitioner himself has abandoned the services having accepted the terminal benefits in pursuance of condition No.2 of the agreement and on that premise he declined to interfere with the order passed by the 2nd respondent Authority. Assailing the said two orders, the present writ petition is filed.

Sri A.K. Jayaprakash Rao, learned counsel appearing for the petitioner submitted that the agreement, dated 30.10.1986 is illegal as it is opposed to public policy under Section 23 of the Indian Contract Act. He also vehemently submitted that the termination of petitioner's services is in the teeth of the provisions of Section 40 of the Act 1988 inasmuch as, the 3rd respondent failed to assign any reason for petitioner's discontinuation. He also submitted that the petitioner's termination is contrary to Section 25 (F) of the Industrial Disputes Act under which termination of a workman shall be preceded by either one month's notice or wages in lieu thereof.

Sri C. Ramchandra Reddy, learned counsel appearing for the 3rd respondent while seeking to sustain the orders of the Labour Court and also the 2nd respondent Authority submitted that the petitioner voluntarily entered into an agreement with the management on 30.10.1986 and that the said agreement worked itself out as the 3rd respondent complied with conditions 1 and 2 under which the petitioner was not only reinstated into service, but paid backwages with continuity of service, apart from the petitioner being paid terminal benefits on the expiry of six months from the date of reinstatement

following the agreement. His contention therefore is that the petitioner merely acted upon the agreement and voluntarily stopped attending the duties on the expiry of the contract period. Therefore, the question of provisions of Section 25(F) of the Industrial Disputes Act or Section 40 of the A.P. Shops and Establishments Act 1988 being attracted does not arise.

Having heard the rival contentions put-forth by the learned counsel appearing for the parties, I am of the view that the order of the 1st respondent does not suffer from any illegality warranting interference by this Court under Article 226 of the Constitution of India. The contention that the action of the 3rd respondent in not permitting the petitioner to continue in the employment amounts to retrenchment, cannot be accepted for the reason that the petitioner voluntarily entered into the agreement and he received benefits arising therefrom. It is not the case of the petitioner that he entered into the agreement either by coercion or under force. The further contention that the agreement is in violation of Section 23 of the Indian Contract Act is referred wholly to be rejected. Section 23 of the Indian Contract Act reads as under:

> "**What considerations and objects are lawful, and what not –** The consideration or object of an agreement is lawful, unless –
>
> it is forbidden by law; or
>
> is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or
>
> involves or implies injury to the person or property of another; or
>
> the Court regards it as immoral, or opposed to

public policy.

> In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

The learned counsel invited my attention to Section 66 of the Act to drive home his contention that since the impugned act of the employer is forbidden by law, Section 23 of the Indian Contract Act is attracted. I am unable to agree with this contention for the reason that Section 66 of the Act is attracted in cases where an employee enters into any contract relinquishing his rights conferred by this Act. The right, which according to the learned counsel for the petitioner, is conferred on the petitioner under this Act is by Section 40 of the 1996 Act, which is in pari materia with Section 47(1) of the Shops and Establishments Act 1988, under which no employer shall without a reasonable cause terminate the service of an employee, who has been in his employment continuously for a period of not less than six months without giving such employee at least one month's notice in writing or wages in lieu thereof etc.

The main question that would arise for consideration therefore is whether the action of the 3rd respondent in not permitting the petitioner to continue in the employment constitutes termination? It is only in cases, where termination is made contrary to Section 40, Section 66 of the Act is attracted and consequently Section 23 of the Indian Contract Act also gets attracted. As rightly found by the Labour Court, the petitioner stopped attending to duties voluntarily following the agreement entered into by him with the management on 30.10.1986 and that therefore the action of the management did not constitute termination. I am entirely in agreement with the finding of the Labour

Court in this regard. Therefore, the contention raised on the basis of Section 23 of the Indian Contract Act has no merit. There is yet another reason for my disinclination to interfere with the orders passed by the Labour Court as well as the 2nd respondent Authority. The petitioner having derived the benefit from the agreement dated 30.10.1986 by getting reinstated, being paid back wages and receiving the terminal benefits, which presuppose that he had voluntarily agreed to stop working with the 3rd respondent, has turned round and filed the appeal before the 3rd respondent. Had the petitioner believed that the agreement is opposed to public policy, he would not have received at least the terminal benefits. This conduct itself, in my view, disentitles the petitioner to any relief, much less, the relief of reinstatement.

For the aforementioned reasons, the orders of respondents 1 and 2 assailed in this writ petition did not suffer from any illegality for being interfered with by this Court. The writ petition is therefore dismissed. No order as to costs.

C.V. NAGARJUNA REDDY, J

Date: 05.12.2006
ES